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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

18 CR 446 (JMF)

5 WILLIAM McFARLAND,

6 Defendant.

7 -----x

8 New York, N.Y.

9 June 28, 2018

3:15 p.m.

10 Before:

11 HON. JESSE M. FURMAN,

12 District Judge

13 APPEARANCES

14 GEOFFREY S. BERMAN,

15 United States Attorney for the  
16 Southern District of New York

17 CHRISTOPHER DiMASE

18 Assistant United States Attorney

19 RANDALL JACKSON

Attorney for Defendant

20 SUSAN J. WALSH

21 CJA Attorney on Duty

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(Case called)

THE DEPUTY CLERK: Counsel, please state your name for the record.

MR. DiMASE: Good afternoon, your Honor. Christopher DiMase, for the government.

THE COURT: Good afternoon.

MR. JACKSON: Good afternoon, your Honor. Randall Jackson, on behalf of the defendant, William McFarland.

THE COURT: Good afternoon to you, Mr. Jackson. Good to see you.

Good afternoon, Mr. McFarland. You may be seated.

Mr. McFarland, my name is Jesse Furman. I'm a United States district judge here in the Southern District of New York, and have been assigned to this case, which presumably means that I would be the judge who would preside over any trial if you were to go to trial; and, subject to one caveat that I will mentioned in a moment, if you were convicted, I would presumably be the judge who would sentence you. That caveat is as follows: I do know that Mr. McFarland has another matter pending before a colleague of mine, Judge Buchwald, that he has pled guilty in that case in response to, or prompted by, a letter from the government advising Judge Buchwald and myself about the two cases. She and I did have a conversation, and as a result of that conversation, we agreed that I would keep this case, at least for the time being. Depending upon what happens

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1 going forward, there are scenarios in which I think we might  
2 conclude that it would make more sense for her to handle it or  
3 for me to handle the case that she currently has, which is to  
4 say, that those remain open questions. But subject to that  
5 caveat, again, I would be the judge who would preside over any  
6 trial and any sentence if you were convicted.

7 The purpose of today's proceeding is, number one, to  
8 sort out your representation but also to arraign you on the new  
9 indictment in this case, 18 CR 446. Before we do that, though,  
10 let's talk about representation issues.

11 Mr. Jackson, I did receive the letter from you,  
12 indicating that your firm had not been retained to represent  
13 Mr. McFarland on this matter, and you, through a colleague,  
14 appeared at the initial presentment and bail hearing. But I  
15 take it you are seeking to withdraw; is that correct?

16 MR. JACKSON: Yes, your Honor. We believe that the  
17 appointment of CJA in this case would be appropriate.

18 THE COURT: All right.

19 I do have a financial affidavit here. Mr. McFarland,  
20 I take it you've seen this form and reviewed it?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: I guess, Mr. DiMase, I ask for your  
23 position only because I received the letter from Ms. Greenberg  
24 raising some doubts -- I would phrase it that way -- as to  
25 whether Mr. McFarland could qualify for appointed counsel.

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1     Reviewing the affidavit, I would, in the absence of your  
2     letter, have concluded that he does, given that the amount of  
3     debt that he has relative to the assets that he has and the  
4     fact that he's detained and presumably no longer earning any  
5     income.

6             But how do you think I should proceed?

7             MR. DiMASE: Judge, first of all, I should make clear,  
8     I haven't myself seen a copy of the financial affidavit. I'm  
9     not asking to see a copy of it.

10            From the government's point of view, this comes back  
11     ultimately to the forfeiture obligation that Mr. McFarland has  
12     with respect to the first case. There was a preliminary  
13     consent order of forfeiture in the amount of \$26 million  
14     entered at the time of the plea on that first case. And based  
15     on the government's knowledge about Mr. McFarland's assets, we  
16     don't necessarily believe he has monies in excess of that  
17     amount to afford counsel, and any dollar that he might spend  
18     for retained counsel would be a dollar that potentially comes  
19     out of the pockets of victims who are due restitution in that  
20     other case. I think, for that reason, notwithstanding the  
21     assets that are referenced in the government's letter, we do  
22     not oppose the appointment of CJA counsel on this case.

23            I would say that the fact that Mr. Jackson is  
24     remaining as counsel on the other matter is somewhat in tension  
25     with that argument, although my understanding, from speaking to

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1 the assistant assigned to the case, is that Mr. McFarland has  
2 indicated his family has been paying for retained counsel on  
3 the first case. So I don't know that those assets would  
4 necessarily be subject to forfeiture in any event.

5 But that's the long story. The short story is:  
6 Because of the forfeiture allegation and the restitution  
7 obligation on the first case, we would not be opposed to the  
8 appointment of CJA counsel on this case.

9 THE COURT: All right. Very good.

10 Well, I obviously don't know what the arrangement is  
11 with Mr. Jackson in the other case, let alone what the source  
12 of those funds are, but based on the affidavit and what you  
13 just said, I am prepared to approve appointment of counsel in  
14 this matter. Obviously, if it turns out that the defendant  
15 does in fact have enough assets to afford counsel or you have  
16 any reason to think he does, we can always revisit it, and  
17 under the statute, I can either terminate the representation or  
18 require him to repay the government for the costs of that  
19 representation.

20 But for the time being, I will certainly appoint CJA  
21 counsel. My understanding is Ms. Walsh is here. She is the  
22 CJA counsel on duty; is that correct?

23 MS. WALSH: That's correct, your Honor. Good  
24 afternoon.

25 THE COURT: Good afternoon to you. Do you want to

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1 come to counsel table?

2 And, Mr. Jackson, do you want to remain for the  
3 conference?

4 MR. JACKSON: Yes, your Honor, I'll remain. I am  
5 remaining as Mr. McFarland's attorney in the related case, and  
6 so I have reviewed the indictment with Mr. McFarland, and so  
7 I'll remain for today.

8 THE COURT: Great. Well, I thank you for that.

9 Welcome, Ms. Walsh.

10 MS. WALSH: Thank you, your Honor. Susan Walsh of  
11 Vladeck Raskin & Clark. Since I've not had the opportunity to  
12 review the indictment with the gentleman, it's at my request  
13 that his other counsel remain for the purposes of the  
14 arraignment, please.

15 THE COURT: That makes sense. I appreciate  
16 Mr. Jackson's willingness to do so.

17 Ms. Walsh, I heard that you were just making sure that  
18 you had no conflict issues, given the nature of the charges in  
19 this case. Have you been able to confirm that?

20 MS. WALSH: From my -- yes, we do not have a conflict.

21 THE COURT: Great, excellent.

22 Anything I should take up beyond that before we  
23 proceed to arraignment on the charges in the indictment?

24 MR. DiMASE: Nothing from the government.

25 THE COURT: All right. In that case --

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1 MR. JACKSON: No, your Honor.

2 THE COURT: -- Mr. McFarland, would you please rise.

3 Have you seen a copy of the Indictment 18 CR 446,  
4 charging you with one count of wire fraud, one count of money  
5 laundering, one count of bank fraud, one count of aggravated  
6 identity theft, and one count of obstruction of justice, all  
7 while on pretrial release? Have you seen a copy of that  
8 indictment?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Have you read it?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Have you discussed it with Mr. Jackson or  
13 his colleagues?

14 THE DEFENDANT: Yes.

15 THE COURT: Would you like me to read the indictment  
16 out loud, or do you waive its public reading?

17 THE DEFENDANT: I waive the reading, your Honor.

18 THE COURT: And how do you plead at this time, guilty  
19 or not guilty?

20 THE DEFENDANT: I plead not guilty.

21 THE COURT: Thank you. You may be seated.

22 THE DEFENDANT: Thank you.

23 THE COURT: Mr. DiMase, can you tell me, number one,  
24 what the status of the Speedy Trial Clock is at this time?

25 MR. DiMASE: Yes, your Honor.

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1           The defendant was arrested and presented on the  
2           complaint in this matter on June 12th. He was indicted on  
3           June 22nd. And so from then till today, approximately six days  
4           of speedy trial time elapsed.

5           THE COURT: I have read the complaint and the  
6           indictment, so I assume I have a reasonably good understanding  
7           of the nature of the charges, but if there's anything you want  
8           to say by way of background, you can tell me that, and beyond  
9           that, if you could tell me what the nature and status and  
10          discovery is, please.

11          MR. DiMASE: Judge, I think the complaint and the  
12          indictment lay out the essential facts here, so I'll just move  
13          straight to discovery unless the Court has additional  
14          questions.

15          As far as discovery, we are asking for two weeks to  
16          produce that to counsel. Among other things, the materials  
17          would consist of: A search warrant application for the  
18          defendant's residence, with the inventory of photos of the  
19          items seized; email communications from different NYC VIP  
20          Access email accounts, and, as the Court probably knows from  
21          reviewing the complaint in this matter and the indictment, that  
22          is the name of the company at issue in this set of charges, so  
23          those email communications with victims about the events and  
24          ticket sale negotiations; contracts between NYC VIP Access and  
25          customers for the ticket sales in question; the separation



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1 agreement sent by the defendant to Employee 1 to terminate that  
2 person's work for the defendant's companies; NYC VIP Access  
3 business records, including spreadsheets of customer  
4 information; business records; Venmo account records and  
5 payment processor records of NYC VIP employees and associates,  
6 showing customer payments to the company; hotel records and  
7 records from other third parties showing the defendant's use of  
8 the Employee 1's bank account; IP log-in information showing  
9 the defendant's use of the company's email accounts and the  
10 names of others; and a copy of the check that the defendant  
11 forged in the name of Employee 1 and provided to his driver,  
12 which is the subject of Counts Four and Five of the indictment.

13 So that is a general overview of the different types  
14 of discovery we expect to produce, your Honor.

15 THE COURT: All right.

16 And the emails and other electronic communications,  
17 were any of those obtained by way of search warrant or other  
18 application, or were those obtained in some other manner?

19 MR. DiMASE: To the best of my knowledge, your Honor,  
20 I don't believe that those were obtained by search warrant, but  
21 I don't know 100 percent for sure; I'd have to check with  
22 Ms. Greenberg to know that for sure.

23 THE COURT: All right. And any postarrest statements?

24 MR. DiMASE: Not to my knowledge, your Honor, no.

25 THE COURT: Is there a process in place to notify any

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1 crime victims of their rights under the Crime Victims' Rights  
2 Act and applicable law?

3 MR. DiMASE: My best understanding, your Honor, is  
4 that the government has already been in touch with a number of  
5 victims, but I will confirm with Ms. Greenberg that all of the  
6 victims are appropriately notified as required by law.

7 THE COURT: Can you do me a favor: Just to ensure  
8 that that is done, can you or Ms. Greenberg file a letter,  
9 let's say, by next Tuesday confirming that there is a process  
10 in place to notify any known victims of their rights?

11 MR. DiMASE: Yes, your Honor.

12 THE COURT: Thank you.

13 So, Ms. Walsh, I understand that you're just coming  
14 into this now, and therefore not super familiar with the nature  
15 of the charges, but I guess the question I have for you is how  
16 long you would anticipate needing or wanting to review the  
17 discovery that Mr. DiMase described and consider what, if any,  
18 motions you plan to file and file them?

19 MS. WALSH: Your Honor -- I'm just looking at my  
20 calendar -- given the description, it appears that the  
21 discovery is probably electronic, and although it's hard for me  
22 to gauge in terms of volume, just on that description alone, I  
23 think, frankly, realistically, a date the first week in  
24 September probably is the most reasonable. Although I am  
25 available in August, I'm not sure that 30 days, 45 days is

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1 going to be enough, frankly.

2 THE COURT: Mr. DiMase, can you give us a sense of the  
3 quantity of discovery materials that we're talking about? Is  
4 it mostly in paper or electronic or --

5 MR. DiMASE: Judge, I'm left to kind of infer from the  
6 list of discoverable items that Ms. Greenberg communicated to  
7 me. It looks like it may be a decent amount but not an  
8 overwhelming amount of discovery, but I don't have specifics  
9 about the number of documents involved, unfortunately. I'm  
10 sorry.

11 THE COURT: All right.

12 Let me do this. First, I'll require that the  
13 government produce discovery by July 12th, which is two weeks  
14 from today. Then I will set a deadline for filing of any  
15 defense motions. Would September 7th suffice, Ms. Walsh?

16 MS. WALSH: Can I have the 10th, your Honor, the  
17 Monday following?

18 THE COURT: That's Rosh Hashanah. Does that pose an  
19 issue?

20 MS. WALSH: It's not a difficulty from my perspective.

21 THE COURT: Okay. Well, I won't read it on that day,  
22 I can tell you that. But I will set a deadline for defense  
23 motions of September 10th; the government's opposition would be  
24 due on September 24th; and any reply would be due on  
25 October 1st.

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1           Now, my practice is to schedule a second pretrial  
2 conference shortly after the deadline for filing of the  
3 motions. That is not to say that I won't let the motions run  
4 their course and be fully briefed, but that way, if no motion  
5 is filed, we can promptly schedule trial; and if a motion is  
6 filed and there's a need for a hearing, we can promptly do  
7 that. In either case, counsel should be prepared to at least  
8 address the motions in the event that they're the kind of thing  
9 that we could address at a conference. But the bottom line is,  
10 I will have you back on Thursday, September 13th, at 4:15 in  
11 the afternoon. And at that time, again, I will discuss any  
12 motions that have been filed, and we'll schedule a hearing if  
13 there's a need for one.

14           As counsel may know, my practice is to set a trial  
15 date at that second conference. So you should confer in  
16 advance of that conference with respect to how long you would  
17 expect a trial to last and when you would want to have a trial.  
18 I would try to honor your request as long as it's within reason  
19 and consistent with the Speedy Trial Act, but that is with the  
20 understanding that when I set a trial date, it is a firm date.  
21 So once I set that date, absent something pretty extraordinary,  
22 that is the date the case will to go trial, absent another  
23 disposition.

24           My understanding is the defendant was detained in the  
25 Judge Buchwald case but was granted bail in this case. Is that

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1 correct?

2 MR. JACKSON: Your Honor, that is correct.  
3 Essentially, Judge Gorenstein made a determination that  
4 conditions could be set that would allow Mr. McFarland be  
5 released. However, the government invoked the provision for  
6 temporary detention, and so he was detained temporarily but  
7 Judge Gorenstein set up terms that would apply in this case if  
8 Judge Buchwald didn't order him detained in the separate case.  
9 But Judge Buchwald has ordered him detained, so we don't think  
10 there's a continuing bail issue.

11 THE COURT: Very good.

12 Is there an application, Mr. DiMase, under the Speedy  
13 Trial Act?

14 MR. DiMASE: There is, your Honor.

15 First, just to address the Court's earlier question:  
16 I missed a note here from the assistant, saying the majority of  
17 victims have been notified and that we are continuing that  
18 process. I don't know if that satisfies the Court sufficiently  
19 not to have to put the letter in, but she has addressed that  
20 issue here in her notes.

21 THE COURT: Why don't you still put a letter in since  
22 the majority is not all, and I want to make sure that all are  
23 advised of their rights.

24 MR. DiMASE: Very good. Yes, your Honor.

25 Yes, we would request the exclusion of speedy trial

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1 time from today until the date of the next conference, to  
2 September 13th, in order to allow the government to produce  
3 discovery, for counsel to review that discovery with the  
4 defendant, consider any appropriate motions, file those  
5 motions, and potentially discuss a resolution of the case with  
6 the government.

7 THE COURT: Any objections, Mr. Jackson? Let me ask  
8 you first.

9 MR. JACKSON: No objections, your Honor.

10 THE COURT: Ms. Walsh?

11 MS. WALSH: No, your Honor.

12 THE COURT: All right. I will exclude time, under the  
13 Speedy Trial Act, between today and September 13th, 2018. I  
14 find that the ends of justice served by excluding that time  
15 outweigh the interests of the public and the defendant in a  
16 speedy trial; to allow the defendant and defense counsel, who  
17 is newly appointed, an opportunity to review the discovery that  
18 it will be receiving in the next couple weeks; to consider  
19 what, if any, motions the defendant wishes to file, and to  
20 prepare those motions.

21 Anything else, Mr. DiMase?

22 MR. DiMASE: No, your Honor. Thank you.

23 THE COURT: Mr. Jackson, anything from you?

24 MR. JACKSON: No, your Honor. Thank you.

25 THE COURT: Ms. Walsh?

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1 MS. WALSH: No, your Honor. Thank you.

2 THE COURT: All right. Mr. Jackson, I don't know if  
3 you have any files or anything related to the case, but I would  
4 just ask that you provide them promptly to Ms. Walsh, and  
5 provide her with any assistance she requires to ensure a smooth  
6 transition of counsel. All right?

7 MR. JACKSON: Yes, your Honor. And I plan to work  
8 cooperatively with Ms. Walsh going forward.

9 THE COURT: Great. Thank you.

10 MR. JACKSON: Thank you, Judge.

11 THE COURT: Thank you very much, and we are adjourned.

12 MR. JACKSON: Thank you, Judge.

13 \* \* \*